



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQ-052-14

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Joel Karmazyn, Environmental Scientist

DATE: June 24, 2014

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-202. Emission Standards: General Burning.

Native American tribes conduct ceremonial burning that involves heating stones in a fire and transferring the hot rocks to a sweat lodge. This ceremonial ritual cannot be conducted under the current rule during restricted burning days. Native American tribe members have requested an exemption from the burning rule restriction to conduct this religious ceremony when conducted by a "Native American spiritual advisor," as newly defined in R307-202.

Staff Recommendation: Staff recommends the Board propose R307-202 for public comment.

1 **R307. Environmental Quality, Air Quality.**

2 **R307-202. Emission Standards: General Burning.**

3 **R307-202-1. Applicability.**

4 R307-202-4 through R307-202-8 applies to general burning within
5 incorporated community under the authority of county or municipal
6 fire authority.

7
8 **R307-202-2. Definitions.**

9 The following additional definitions apply only to R307-202.

10 [~~(1)~~] "Attainment areas" means any area that meets the national
11 primary and secondary ambient air quality standard (NAAQS) for the
12 pollutant.

13 [~~(2)~~] "County or municipal fire authority" means the public
14 official so designated with the responsibility, authority, and
15 training to protect people, property, and the environment from fire,
16 within their respective area of jurisdiction.

17 [~~(3)~~] "Federal Class I Area" means an area that consists of
18 national parks exceeding 6,000 acres, wilderness areas and national
19 memorial parks exceeding 5,000 acres, and all international parks
20 that were in existence on August 7, 1977. See Clean Air Act section
21 162(a).

22 [~~(4)~~] "Fire hazard" means a hazardous condition involving
23 combustible, flammable, or explosive material that represents a
24 substantial threat to life or property if not immediately abated,
25 as declared by the county or municipal fire authority.

26 "Native American spiritual advisor" means a person who leads,
27 instructs, or facilitates a Native American religious ceremony or
28 service; or provides religious counseling; is an enrolled member of
29 a federally recognized Native American tribe; and is recognized as
30 a spiritual advisor by a federally recognized Native American tribe.
31 "Native American spiritual advisor" includes a sweat lodge leader,
32 medicine person, traditional religious practitioner, or holy man or
33 woman.

34
35 **R307-202-3. Exclusions.**

36 As provided in Section 19-2-114, the provisions of R307-202 are
37 not applicable to:

38 (1) Except for areas zoned as residential, burning incident
39 to horticultural or agricultural operations of:

40 (a) Prunings from trees, bushes, and plants; and

41 (b) Dead or diseased trees, bushes, and plants, including
42 stubble.

43 (2) Burning of weed growth along ditch banks for clearing these
44 ditches for irrigation purposes;

45 (3) Controlled heating of orchards or other crops during the
46 frost season to lessen the chances of their being frozen so long as
47 the emissions from this heating do not cause or contribute to an
48 exceedance of any national ambient air quality standards and is
49 consistent with the federally approved State Implementation Plan;
50 and

51 (4) The controlled burning of not more than two structures per
52 year by an organized and operating fire department for the purpose

1 of training fire service personnel when the National Weather Service
2 clearing index is above 500. See also Section 11-7-1(2)(a).

3 (5) Ceremonial burning is excluded from R307-202-4(2) when
4 conducted by a Native American spiritual advisor.

5
6 **R307-202-4. Prohibitions.**

7 (1) No open burning shall be done at sites used for disposal
8 of community trash, garbage and other wastes.

9 (2) No person shall burn under this rule when the director issues
10 a public announcement under R307-302. The director will distribute
11 such announcement to the local media notifying the public that a
12 mandatory no-burn period is in effect for the area where the burning
13 is to occur.

14
15 **R307-202-5. General Requirements.**

16 (1) Except as otherwise provided in this rule, no person shall
17 set or use an open outdoor fire for the purpose of disposal or burning
18 of petroleum wastes; demolition or construction debris; residential
19 rubbish; garbage or vegetation; tires; tar; trees; wood waste; other
20 combustible or flammable solid, liquid or gaseous waste; or for metal
21 salvage or burning of motor vehicle bodies.

22 (2) The county or municipal fire authority shall approve burning
23 based on the predicted meteorological conditions and whether the
24 emissions would impact the health and welfare of the public or cause
25 or contribute to an exceedance of any national ambient air quality
26 standard.

27 (3) Nothing in this regulation shall be construed as relieving
28 any person conducting open burning from meeting the requirements of
29 any applicable federal, state or local requirements concerning
30 disposal of any combustible materials.

31 (4) The county or municipal fire authority that approves any
32 open burning permit will retain a copy of each permit issued for one
33 year.

34
35 **R307-202-6. Open Burning - Without Permit.**

36 The following types of open burning do not require a permit when
37 not prohibited by other local, state or federal laws and regulations,
38 when it does not create a nuisance, as defined in Section 76-10-803,
39 and does not impact the health and welfare of the public.

40 (1) Devices for the primary purpose of preparing food such as
41 outdoor grills and fireplaces;

42 (2) Campfires and fires used solely for recreational purposes
43 where such fires are under control of a responsible person and the
44 combustible material is clean, dry wood or charcoal; and

45 (3) Indoor fireplaces and residential solid fuel burning
46 devices except as provided in R307-302-2.

47
48 **R307-202-7. Open Burning - With Permit.**

49 (1) No person shall knowingly conduct open burning unless the
50 open burning activities may be conducted without a permit pursuant
51 to R307-202-6 or the person has a valid permit for burning on a
52 specified date or period, issued by the county or municipal fire

1 authority having jurisdiction in the area where the open burning will
2 take place.

3 (2) A permit applicant shall provide information as requested
4 by the county or municipal fire authority. No permit or authorization
5 shall be deemed valid unless the issuing authority determines that
6 the applicant has provided the required information.

7 (3) Persons seeking an open burning permit shall submit to the
8 county or municipal fire authority an application on a form provided
9 by the director for each separate burn.

10 (4) A permit shall be valid only on the lands specified on the
11 permit.

12 (5) No material shall be burned unless it is clearly described
13 and quantified as material to be burned on a valid permit.

14 (6) No burning shall be conducted contrary to the conditions
15 specified on the permit.

16 (7) Any permit issued by a county or municipal fire authority
17 shall be subject to the local, state, and federal rules and
18 regulations.

19 (8) Open burning is authorized by the issuance of a permit,
20 as stipulated within this rule, for specification in R307-202-7(10).

21 These permits can only be issued when not prohibited by other local,
22 state, or federal laws and regulations and when a nuisance as defined
23 in Section 76-10-803 is not created and does not impact the health
24 and welfare of the public.

25 (9) Individual permits, as stipulated within this rule, for
26 the types of burning listed in R307-202-7(10) may be issued by a county
27 or municipal fire authority when the clearing index is 500 or greater.

28 When the clearing index is below 500, all permits issued for that
29 day will be null and void until further notice from the county or
30 municipal fire authority. Additionally, anyone burning on the day
31 when the clearing index is below 500 or is found to be violating any
32 part of this rule shall be liable for a fine in accordance with
33 R307-130.

34 (10) Types of open burning for which a permit may be granted
35 are:

36 (a) Except in nonattainment and maintenance areas, open burning
37 of tree cuttings and slash in forest areas where the cuttings accrue
38 from pulping, lumbering, and similar operations, but excluding waste
39 from sawmill operations such as sawdust and scrap lumber.

40 (b) Open burning of trees and brush within railroad
41 rights-of-way provided that dirt is removed from stumps before
42 burning, and that tires, oil more dense than #2 fuel oil, tar, or
43 other materials which can cause severe air pollution are not present
44 in the materials to be burned, and are not used to start fires or
45 to keep fires burning.

46 (c) Open burning of a fire hazard that a county or municipal
47 fire authority determines cannot be abated by any other viable option.

48 (d) Open burning of highly explosive materials when a county
49 or municipal fire authority, law enforcement agency or governmental
50 agency having jurisdiction determines that onsite burning or
51 detonation in place is the only reasonably available method for safely
52 disposing of the material.

1 (e) Open burning for the disposal of contraband in the
2 possession of public law enforcement personnel provided they
3 demonstrate to the county or municipal fire authority that open burning
4 is the only reasonably available method for safely disposing of the
5 material.

6 (f) Open burning of clippings, bushes, plants and prunings from
7 trees incident to property clean-up activities, including residential
8 cleanup, provided that the following conditions have been met:

9 (i) Within only the counties of Washington, Kane, San Juan,
10 Iron, Garfield, Beaver, Piute, Wayne, Grand and Emery, the county
11 or municipal fire authority may issue a permit between March 1 and
12 May 30 when the clearing index is 500 or greater. The county or
13 municipal fire authority may issue a permit between September 15 to
14 November 15 for such burning to occur when the state forester has
15 approved the burning window under Section 65A-8-211 and the clearing
16 index is 500 or greater.

17 (ii) In all other areas of the state, the county or municipal
18 fire authority may issue a permit between March 30 and May 30 for
19 such burning to occur when the clearing index is 500 or greater.
20 The county or municipal fire authority may issue a permit between
21 September 15 and October 30 for such burning to occur when the state
22 forester has approved the burning window under Section 65A-8-211 and
23 the clearing index is 500 or greater.

24 (iii) Such burnings occur in accordance with state and federal
25 requirements;

26 (iv) Materials to be burned are thoroughly dry; and

27 (v) No trash, rubbish, tires, or oil are included in the material
28 to be burned, used to start fires, or used to keep fires burning.

29 (g) Except for nonattainment and maintenance areas, the
30 director may grant a permit for types of open burning not specified
31 in R307-202-7(3) on written application if the director finds that
32 the burning is consistent with the federally approved State
33 Implementation Plan and does not cause or contribute to an exceedance
34 of any national ambient air quality standards.

35 (i) This permit may be granted once the director has reviewed
36 the written application with the requirements and criteria found
37 within this rule at R307-202-7.

38 (ii) Open Burning Permit Criteria.

39 (A) The director or the county or municipal fire authority shall
40 consider the following factors in determining whether, and upon what
41 conditions, to issue an open burning permit:

42 (I) The location and proximity of the proposed burning to any
43 building, other structures, the public, and federal Class I areas
44 that might be impacted by the smoke and emissions from the burn;

45 (II) Burning will only be conducted when the clearing index
46 is 500 or above; and

47 (III) Whether there is any practical alternative method for
48 the disposal of the material to be burned.

49 (B) Methods to minimize emissions and smoke impacts may include,
50 but are not limited to:

51 (I) The use of clean auxiliary fuel;

52 (II) Drying the material prior to ignition; and

1 (III) Separation for alternative disposal of materials that
2 produce higher levels of emissions and smoke during the combustion
3 process.

4 (C) Open burning permits are not valid during periods when the
5 clearing index is below 500 or publicly announced air pollution
6 emergencies or alerts have been declared in the area of the proposed
7 burn.

8 (D) For burns of piled material, all piles shall be reasonably
9 dry and free of dirt.

10 (E) Open burns shall be supervised by a responsible person who
11 shall notify the local fire department and have available, either
12 on-site or by the local fire department, the means to suppress the
13 burn if the fire does not comply with the terms and conditions of
14 the permit.

15 (F) All open burning operations shall be subject to inspection
16 by the director or county or municipal fire authority. The permittee
17 shall maintain at the burn site the original or a copy of the permit
18 that shall be made available without unreasonable delay to the
19 inspector.

20 (G) If at any time the director or the county or municipal fire
21 authority granting the permit determines that the permittee has not
22 complied with any term or condition of the permit, the permit is subject
23 to partial or complete suspension, revocation or imposition of
24 additional conditions. All burning activity subject to the permit
25 shall be terminated immediately upon notice of suspension or
26 revocation. In addition to suspension or revocation of the permit,
27 the director or county or municipal fire authority may take any other
28 enforcement action authorized under state or local law.

29
30 **R307-202-8. Special Conditions.**

31 (1) Open burning for special purposes or under unusual or
32 emergency circumstances may be approved by the director if it is
33 consistent with the federally approved State Implementation Plan and
34 does not cause or contribute to an exceedance of any national ambient
35 air quality standards.

36 (a) This permit may be granted once the director has reviewed
37 the written application with the requirements and criteria in
38 R307-202-7.

39
40 **KEY: air pollution, open burning, fire authority**

41 **Date of Enactment or Last Substantive Amendment: [~~July 31, 2012~~]2014**

42 **Notice of Continuation: March 4, 2010**

43 **Authorizing, and Implemented or Interpreted Law: 19-2-104;**
44 **11-7-1(2)(a); 65A-8-211; 76-10-803**